

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

RECEIVED

DEC 5 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Cadiz and Oak Grove, Kentucky))

MM Docket No. 93-314
RM-8396

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Attention: Mail Stop 1800D5

DOCKET FILE COPY ORIGINAL

OPPOSITION TO PETITION FOR RECONSIDERATION

1. Ham Broadcasting Co., Inc. ("Ham") hereby opposes the Petition for Reconsideration in the above-captioned proceeding, filed by Southern Broadcasting Corporation ("Southern") on October 26, 1995. Ham is the licensee of WKDZ-FM, Cadiz, Kentucky, and is the proponent in RM-8396, seeking to move upgrade WKDZ-FM to Class C3 status, with a change of community of license from Cadiz to Oak Grove.

2. The Commission's *Report and Order* was carefully reasoned and should not be reconsidered. Southern has not presented any good reason to the contrary. It has not demonstrated any relevant error of fact on the Commission's part and has presented no fact that was not before the Commission when the *Report and Order* was written. Rather, Southern has merely reargued the points made in its earlier opposition to the proposal and

No. of Copies rec'd
List ABCDE

24

stated that the Commission should have reached the opposite conclusion. The Commission has stated many times before that "reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken."^{1/} Accordingly, there is no basis for reconsideration in this case.

3. On the merits, Southern's reargument that Oak Grove is not a separate community establishes, if anything at all, only that Oak Grove has a close economic relationship with the military installation at Fort Campbell, Kentucky. While Fort Campbell, like Oak Grove, may technically be included as part of the Clarksville, Tennessee, Urbanized Area, Southern has not shown that Fort Campbell and Clarksville are one and the same community. Indeed, it could well be the case that Fort Campbell meets the requirements for a separate community specified in *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988).^{2/} Thus Oak Grove's economic ties to the military base at Fort Campbell in no way establish that Oak Grove is not a separate community from Clarksville or deserving of a Section 307(b) preference. The Commission's analysis of the situation was thorough and well-reasoned. It should not be disturbed.

^{1/} See, e.g., *Lanser Broadcasting Group*, FCC 95-435, rel. Nov. 7, 1995; and *Omaha Great Empire Broadcasting, Inc.*, FCC 95-349, rel. Oct. 4, 1995, both citing *Isis Broadcast Group*, 8 FCC Rcd 24 (Rev. Bd. 1992).

^{2/} Therefore, it is not relevant that most of Oak Grove's residents work in the "Urbanized Area." Both parties agree that most work at Fort Campbell, not Oak Grove.

4. Nor is Southern's complaint that the Commission did not adequately analyze the factors in *Tuck* a valid one. Southern does not point to any element of *Tuck* that the Commission ignored; it argues only that the Commission should have reached a different conclusion in its analysis. The Commission's job, however, is to uphold the public interest; and it has considerable expertise in *Tuck* analyses which it brought to bear in the instant proceeding. Southern's own economic interest in avoiding new competition is so strong that its analysis can hardly be deemed objective.^{3/} For example, Southern's claim that the declaration of "community leader" Ms. Lyne should be given more weight than the declaration of the Mayor of Oak Grove -- Oak Grove's top governmental official -- underscores the transparency of its argument.

5. Finally, Southern ignores the critical benefit noted by the Commission in the *Report and Order*, that the result of this proceeding will be a more efficient use of the spectrum by means of an upgrade for WKDZ-FM that cannot be achieved if the station remains licensed to Cadiz. The net gain of service to 2,889 square kilometers inhabited by 159,881 persons^{4/} cannot be ignored.

^{3/} Southern's statement that it has opposed Ham's proposal "solely because it expects the Commission to require licensees...to meet the standards that were established in *Tuck* and *KFRC*," and Southern is relying on its economic interest solely to provide standing (Southern Petition for Reconsideration at ¶14), strains credulity. Southern has spent an enormous amount of time, effort, and money in its self-styled altruistic quest to support the public interest. It is difficult to believe that so much would have been invested absent the strong element of economic self-interest.

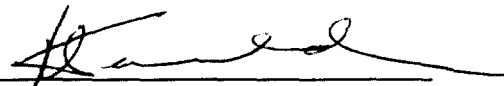
^{4/} *Report and Order* at par. 17.

6. In sum, the Commission's analysis was careful and well-reasoned, taking into consideration the arguments of both sides. Southern has shown no error that warrants reconsideration but has only reargued positions already taken into account and rejected by the Commission. Accordingly, the Commission should deny the petition for reconsideration.

Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

December 5, 1995

Respectfully submitted,


Peter Tannenwald

Counsel for Ham Broadcasting Co., Inc.

CERTIFICATE OF SERVICE

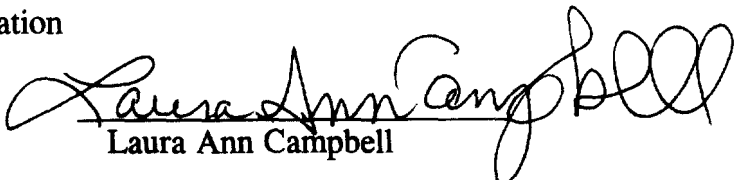
I, Laura Ann Campbell, do hereby certify that I have, this 5th day of December, 1995, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Opposition to Petition for Reconsideration" to the following:

John A. Karousos, Chief (by hand delivery)
Allocations Branch
Policy and Rules Division
Mass Media Bureau
2025 M St., N.W., Room 8322
Federal Communications Commission
Washington, DC 20554

Andrew S. Kersting, Esquire
Fletcher Heald & Hildreth, P.L.C.
1300 - North 17th St., 11th Floor
Rosslyn, VA 22209-3801
Counsel for Southern Broadcasting Corporation

H. B. Quinn, Esquire
Trigg County Attorney
P.O. Box 186
Cadiz, KY 42211

W. Howell Hopson, III, Chairman
Trigg County Board of Education
202 Main St.
Cadiz, KY 42211


Laura Ann Campbell